
In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)	
)	Chapter 13 Case
LOLA R. FLOWERS)	
)	Number <u>96-21061</u>
<i>Debtor</i>)	

**ORDER ON DEBTOR'S MOTION TO ACCEPT SETTLEMENT
AND FOR DEBTOR TO RETAIN PROCEEDS**

Debtor filed a Motion seeking authority to settle a workers' compensation claim upon payment of a lump sum amount and further sought authority to retain the net proceeds after payment of attorney's fees. The Chapter 13 Trustee objected citing this Court's decision of In re Gamble, 208 B.R. 598 (Bankr.S.D.Ga. 1997). In response Debtor's counsel contends that the Gamble case is distinguishable because of the provisions of O.C.G.A. Section 34-9-84. That section provides as follows:

No claim for compensation under this chapter shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

Debtor contends that this Court's precedent exemplified by Gamble is not applicable to these funds. I agree.

In pertinent part, Section 522(b)(2)(A) provides that,

. . . an individual debtor may exempt from property of the estate . . . any property that is exempt under . . . State or local law that is applicable on the date of the filing

Pursuant to O.C.G.A. Section 34-9-84 and Section 522, Debtor has claimed an exemption in her worker's compensation settlement, *see In re Koch*, 109 F.3d 1285 (8th Cir. 1997). At issue in this case is whether the debtor is entitled to receive the benefit of this exemption immediately or only upon entry of her Chapter 13 discharge. In Gamble, I held that a Chapter 13 debtor may not enjoy the benefit of his or her exemption prior to the conclusion of the case because of the language of Section 522(c) which provides that "*unless the case is dismissed*, property exempted under *this section* is not liable during or after the case for any debt that arose . . . before commencement of the case." (emphasis added). Because this provision expressly predicates a debtor's ability to make property exempt from creditors' claims upon the case not being dismissed, I held that pursuant to the Bankruptcy Code a Chapter 13 debtor cannot rightfully enjoy his or her exemption until the conclusion of the case, at which point the exemption is earned, and cannot be divested. To allow the debtor earlier enjoyment of the exemption potentially would allow the property to be consumed, free of creditors' legitimate state law remedies which are stayed during bankruptcy, even if debtor's case is subsequently dismissed and no

discharge is obtained.

However, the same reasoning is inapplicable to the present case. In this case, Debtor relies on an exemption that exists regardless of whether an individual has filed bankruptcy. *See* O.C.G.A. Section 34-9-84. The distinction is critical. Although this exemption is permitted by Section 522(b), Section 522(c)'s restriction on the debtor's receipt of this exemption is inapplicable. This is true because the language of Section 34-9-84, which places compensation benefits beyond the reach of creditors as a matter of state law, is not dependent on any provision of the Bankruptcy Code, and in particular is not conditioned on the debtor filing bankruptcy and subsequently receiving a discharge under Section 1328. In other words under Georgia law, workers' compensation benefits are exempt from creditors' claims regardless of the existence of bankruptcy and thus their receipt is not contingent upon successful completion of the case.

In contrast, the exemptions provided in O.C.G.A. Section 44-13-100 are created under state law "for the purposes of bankruptcy." Absent bankruptcy these items are not shielded against creditors' claims. As a result, in order to benefit from the exemption, all other bankruptcy provisions must be honored, including the Section 522(c) limitation, as held in Gamble.

In conclusion, Debtor's entitlement to the immediate use of these funds

exists because the funds in issue would be beyond the reach of the Debtor's creditors even if she had never filed a bankruptcy case. It would be an odd result indeed if the filing of a bankruptcy case in order to obtain relief from one's obligations resulted in the debtor losing the present enjoyment of workers' compensation benefits to which he or she would otherwise be entitled outside of bankruptcy.

For the foregoing reasons the Debtor's Motion is granted and the Trustee is directed to remit the remaining proceeds on hand after deduction of any administrative expenses to the Debtor.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of August, 1997.